

REMARKS

Reconsideration of the subject patent application is respectfully requested. The Examiner has raised a drawing objection and a Replacement Sheet for FIG. 2 is being submitted with this response. The drawing revisions to FIG. 2 have already been explained.

Claims 1-19 are currently pending and these claims have been rejected by the Examiner based on a combination of prior art references. Claims 1-19 include four (4) independent claims (1, 17, 18 and 19). More specifically, claims 1-19 are rejected under 35 U.S.C. §103(a) as being unpatentable over Oki et al. in view of Anderson.

In the remarks offered by the Examiner it is acknowledged that Oki et al. fails to disclose a labeling device. The Anderson reference is cited for its disclosure of a labeling device. The Examiner concludes it would have been obvious to include the labeling device of Anderson into the potting machine structure of Oki et al. Applicant disagrees.

If one merely takes structure names out of context and on paper puts those names together, the Examiner's combination of references might seem to fit. Oki et al. discloses a "potting machine" and Anderson discloses a "labeling device." Putting these two phrases together, without regard to any of the surrounding facts, we get a potting machine with a labeling device. This may sound simple, but consideration of the facts provides an entirely different result. The "facts" deal with the engineering and structural realities and the "facts" compel a finding that it would not be obvious to even try and combine Oki et al. and Anderson. As a practical matter this combination would not be done and cannot be done.

Oki et al. provides a somewhat complex mechanical linkage that does not contemplate nor provide for any labeling of the pots. In order to add such a capability a person of ordinary skill in the art would first have to devise a labeling system that is suitable for the unique geometry of flowerpots. Next, our hypothetical person would have to decide if it is possible to integrate this labeling system into the Oki et al. structure and if so where. Oki et al. does not disclose any automated or conveyORIZED step of actually placing the plant (77) in the pot. It is assumed, based on this lack of disclosure, that this step is performed manually. Until a decision is made as to what plant is going to be placed in a particular pot, that selected pot is not ready to be labeled.

The manual step of placing plant (77) in the pot means that the only logical sequel for a labeling step is that it would also be performed manually. Oki et al. is only directed to "depositing and shaping soil," nothing more. This reference is not directed to either the automated potting of a flower or a plant or the automated labeling of the pot. Why then would anyone, ordinary skill or otherwise, even consider such a major design modification to Oki et al. simply to try and transform it into something that it is not and was not intended to be? Oki et al. does not automate the transplanting step so why would it need to include an automated labeling step?

Applicant contends that there is no factual basis nor any legal basis for attempting to combine Oki et al. and Anderson. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claims 1-19 on this basis.

The Examiner is also asked to consider that the Anderson reference is limited to applying a label to a flat (horizontal) surface of a folder that is traveling flat on a horizontal conveyor. There are no complex geometries associated with the surface to

which the label is applied. As should be clear from Applicant's specification and claims, the conicality of a flowerpot presents a unique labeling challenge. The Examiner has not offered any suggestion as to how Anderson might be modified to convert its flat labeling technology into labeling technology that would be suitable for applying a label onto a conical surface. Anderson does not disclose nor does it suggest any expanded capability beyond labeling flat folders.

One way to address the conicality challenge is to construct a system with additional degrees of freedom for the positioning of the dispensing tongue. In this regard, claim 1 recites a second joint (29) that enables the dispensing tongue to be inclined as a function of the conicality of the flowerpots. Oki et al. does not contemplate any labeling of any type, regardless of the shapes. Anderson is limited to a single degree of freedom for the dispensing tongue and only contemplates applying a label to a flat, horizontally moving, file folder. While both cited references are clearly functionally deficient, and while it would not be obvious to try and combine the two, Anderson does not disclose a second pivot.

The Examiner believes that roller (58) of Anderson is a second pivot that somehow influences the incline of the dispensing tongue (40). Applicant disagrees. There are several problems with the position being taken by the Examiner with regard to treating roller (58) as a second pivot.

- (1) Anderson makes absolutely no mention of any effect that roller (58) could possibly have on the incline of the dispensing tongue.

(2) On a particularly technical or engineering basis, roller (58) presses the label onto the folder and the roller is spring biased to maintain a suitable pressure for proper contact. Any reverse force is taken up by the spring and could never change the incline of the dispensing tongue, once the incline is set. The disclosure of Anderson makes it clear that the dispensing tongue while inclined with one degree of freedom is fixed in that position by the use of item (68) and the threaded bolts (70).

(3) Even if we could accept the (flawed) premise that some type of huge bounce-back force applied to roller (58) could somehow deflect or wobble the dispensing tongue a little to perhaps minimally change the incline for a brief moment, this is still not movement about a second “pivot.” Even this movement would still only involve motion around the pivot at location (42). As noted, there is but a single pivot location for the dispensing tongue of Anderson.

(4) Any momentary change to the angle of incline of the dispensing tongue of Anderson under the (flawed) premise of point (3) above would never be “inclined as a function of the conicality of the flowerpots to be labeled.” (emphasis added). This claim language focuses on a designed incline based on the flowerpot shape and is not the result of some speculative and random bounce-back force that might be applied to roller (58).

For all of these reasons the Examiner is respectfully requested to withdraw the rejection of claims 1-19 based on the combination of Oki et al. and Anderson. While the

“conicality” aspect is found in claim 1 and not specifically in claims 17-19, claims 18 and 19 currently include the recitation of additional structural features including multiple joints or pivots that clearly distinguish these claims from the combination of Oki et al. and Anderson. Further, with regard to claim 19, the referenced informality raised by the Examiner is apparently the result of a word processing error that dropped a line of text from the claim at the time of the last amendment. This has been corrected.

With regard to claim 17, this claim recites that the dispensing tongue is positioned automatically against the flowerpots and this corresponding structure is not found in either Oki et al. or Anderson nor in any combination of these references. Further, claim 17 has been amended to recite that the positioning device includes two pivot locations. This added structural feature is something which is not found in either Oki et al. or Anderson nor in any combination of these two references.

New claims 20 and 21 have been added to further define the subject matter which the Applicant is entitled to protect.

In view of the replacement sheet for the drawing corrections, the amendments to the claims and the remarks offered with regard to the cited prior art, the Examiner is respectfully requested to indicate the allowability of claims 1-21 as now submitted. Applicant also extends its appreciation to the Examiner for the time taken to briefly discuss the interpretation of roller (58) of the Anderson reference with the undersigned attorney of record. While this brief discussion should not be characterized as a formal

telephonic interview, since there were no specific proposals, it was helpful in better understanding the Office Action. This brief discussion occurred on June 4, 2009 and was limited to a discussion of the Anderson reference and roller (58).

Respectfully submitted,

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